

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA**

David Coty Peach,)
)
Plaintiff,) **ORDER**
)
vs.)
)
Correctional Officer FNU White Cloud,)
and Correctional Officer FNU Herba,)
)
Defendants.) Case No. 1:24-cv-013

On May 24, 2024, Plaintiff filed what the court construes as a motion to compel. (Doc. No. 21). Plaintiff seeks an order directing the North Dakota State Penitentiary to provide him with copies of his medical records from April 2024 through May 2024.

On May 28, 2024, Defendants filed a response in opposition to Defendant's motion. (Doc. No. 24). They assert that Plaintiff's motion is premature given the present posture of this case. The court agrees.

With respect to discovery in cases such as this, the court employs the following protocol. First, the court is required by 28 U.S.C. § 1915A to screen plaintiff's complaint. If, after reviewing the complaint, the court identifies any cognizable claims, it will direct the Clerk's office to effectuate service of the complaint on defendants. Id.; Fed. R. Civ. P. 4. Once served with a copy of the complaint, defendants are afforded by rule time to file responsive pleadings. Fed. R. Civ. P. 4. Once defendants have made an appearance and filed a responsive pleading, the court will direct the parties to submit proposed scheduling and discovery plans. Upon receipt and review of these proposed plans, the court shall issue a scheduling and discovery order. See Fed. R. Civ. P. 16(b)(1). In the interim, until the scheduling and discovery order is issued, discovery is not generally

permitted. Cf. Fed. R. Civ. P. 26(d)(1) (“A party may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B), or when authorized by these rules, by stipulation, or by court order.”).

Here, the court has screened Plaintiff’s complaint and directed that it be served on Defendants, who have in turn filed a motion to dismiss Plaintiff’s Complaint which has the potential to negate the need for them to file a responsive pleadings or the parties to engage in discovery.

Accordingly, the court finds that Plaintiff’s motion is premature. Plaintiff’s motion to compel (Docket No. 21) is **DENIED** without prejudice.

IT IS SO ORDERED.

Dated this 7th day of October, 2024.

/s/ Clare R. Hochhalter
Clare R. Hochhalter, Magistrate Judge
United States District Court